



601 Pennsylvania Ave., NW  
Suite 800  
Washington, DC 20004  
202-654-5900

October 14, 2014

**VIA ELECTRONIC FILING**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**EX PARTE PRESENTATION**

**WT Docket No. 05-265, *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services***

Dear Ms. Dortch:

On October 10, 2014, T-Mobile USA, Inc. (“T-Mobile”) representatives Andrew Levin, Dirk Mosa, Josh Roland (for the WTB meeting only), and the undersigned, along with Dr. Joseph Farrell and Robert Kidwell, counsel to T-Mobile, met separately with Renee Gregory, Legal Advisor to Chairman Wheeler; Louis Peraertz, Legal Advisor to Commissioner Clyburn; Brendan Carr, Legal Advisor to Commissioner Pai; Erin McGrath, Legal Advisor to Commissioner O’Rielly; and Roger Sherman, Chief of the Wireless Telecommunications Bureau, along with Jim Schlichting, Sade Oshinubi, Heidi Kroll, Aleks Yankelevich, Joel Taubenblatt, Catherine Matraves, and Garnet Hanly of the Wireless Telecommunications Bureau to discuss the Petition for Expedited Declaratory Ruling filed by T-Mobile on May 27, 2014.<sup>1/</sup> A copy of the slide presentation distributed at each of these meetings is attached.

T-Mobile explained that it is seeking expedited Commission action in order to provide prospective guidance to wireless carriers and predictable enforcement criteria for determining whether the terms of a given data roaming agreement or proposal meet the “commercially reasonable” standard adopted in the FCC’s 2011 *Data Roaming Order*.<sup>2/</sup>

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<sup>1/</sup> See Petition for Expedited Declaratory Ruling of T-Mobile USA, Inc., WT Docket No. 05-265 (filed May 27, 2014) (“T-Mobile Data Roaming Petition”); see also *Wireless Telecommunications Bureau Seek Comment on Petition for Expedited Declaratory Ruling Filed by T-Mobile USA, Inc. Regarding Data Roaming Obligations*, Public Notice, WT Docket No. 05-265, DA 14-798 (rel. June 10, 2014).

<sup>2/</sup> See *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, 26 FCC Rcd. 5411, ¶¶ 40-41 (2011) (“Data Roaming Order”), aff’d sub nom. *Cellco P’ship v. FCC*, 700 F.3d 534 (D.C. Cir. 2012).

Expedited action is important for the industry, as new data roaming agreements—many of which are replacing legacy agreements negotiated prior to release of the *Data Roaming Order*—are being negotiated across the industry. Many of these new agreements will include 4G/LTE data roaming for the first time, and additional Commission guidance is essential for carriers to expedite the negotiation of commercially reasonable agreements.

T-Mobile explained that the data roaming marketplace is currently broken. Must-have roaming partners are able to raise their rivals' costs in a way that artificially inflates prices and unnecessarily degrades their customers' experience. One stark (but not uncommon) example shows that, because of AT&T's artificially high roaming rates, T-Mobile wireless customers roaming in South Africa have a better user experience than customers roaming on AT&T's network in South Dakota. Their speed is twice as fast, and their data usage is unlimited. The record in this proceeding shows that other carriers are forced to throttle and cap data usage as well when their customers roam on AT&T's network.

The limited intervention and guidance sought by T-Mobile will provide necessary clarity for individualized negotiations and help all parties better evaluate the commercial reasonableness of offered terms.<sup>3/</sup> T-Mobile is not seeking the regulation of rates. Instead, its Petition requests guidance to facilitate negotiation of commercial agreements and dispute resolution—a ruling which is well within the Commission's current authority and which the Commission itself anticipated in the *Data Roaming Order*.<sup>4/</sup> Such narrow relief will help ensure ubiquitous availability of roaming on commercially reasonable terms benefitting consumers.

Pursuant to Section 1.1206(b)(2) of the Commission's rules, an electronic copy of this letter and the attached handout is being filed for inclusion in the above-referenced docket. A copy of this letter and the attached handout is also being provided to all Commission personnel who attended the meeting. Please direct any questions regarding this filing to the undersigned.

Respectfully submitted,

/s/ Luisa L. Lancetti

Luisa L. Lancetti  
Chief Counsel, Law and Policy  
Federal Regulatory

Attachment

cc: (via email)

Renee Gregory, Louis Peraertz,  
Brendan Carr, Erin McGrath,  
Roger Sherman, Jim Schlichting,  
Sade Oshinubi, Heidi Kroll,  
Aleks Yankelevich, Joel Taubenblatt  
Garnet Hanly, Catherine Matraves

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<sup>3/</sup> See T-Mobile Data Roaming Petition at 10.

<sup>4/</sup> See *id.* at 1, 23-27.

T-Mobile®

## Petition for Expedited Declaratory Ruling

WTB Docket No. 05-265, DA 14-798

October 10, 2014

# Summary

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- TMUS is seeking modest Commission action to provide prospective guidance to wireless carriers in negotiations and more predictable enforcement criteria for determining whether the terms of a given data roaming agreement or proposal meet the “commercially reasonable” standard.
- As consumers shift to primarily using smartphones, and as data usage increases exponentially, commercially reasonable data roaming terms and ubiquitous, reliable data roaming service are essential.
- Limited Commission guidance in the form of clarifications and benchmarks will help all parties better evaluate the commercial reasonableness of offered terms, and can inform the complaint process as needed.

# Prompt Action is Essential

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- The record closed on August 20, and with the exception of AT&T and Verizon, TMUS' Petition has received widespread support from other carriers and public interest groups.
- The Commission should act expeditiously:
  - Existing data roaming agreements are typically based on legacy agreements that predate the *Data Roaming Order*,
  - Technology underlying the provision of high-speed wireless broadband is evolving, and new LTE roaming agreements are now under negotiation;
  - The negotiation of data roaming agreements can take 9 to 18 months;
  - Carriers need the proposed guidance to assist them in obtaining LTE roaming on commercially reasonable terms for this next wave of technology.

# The Current Data Roaming Market is Broken

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- The current data roaming market is increasingly dysfunctional as “must have” carriers eliminate roaming alternatives through consolidation.
- For example, T-Mobile agreements with AT&T include a data roaming rate that is currently *150 percent higher* than the average domestic rate that T-Mobile pays for data roaming.
  - This rate is *one thousand percent higher* than the data roaming rate negotiated between Leap Wireless and MetroPCS prior to their respective acquisitions.
- Commenters reported being offered data roaming rates that were 10, 25, and even as much as *33 times higher* than the national carriers’ retail rates.

# T-Mobile's Requested Clarifications

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- Four proposed "benchmarks" would provide prospective guidance:
  1. Whether a data roaming rate offered to a retail competitor greatly exceeds a suitable measure of retail price.
  2. Rates charged to foreign carriers.
  3. Rates charged to MVNOs.
  4. Prevailing rates for data roaming charged by non-"must have" carriers.
- Two other requested clarifications:
  - The terms of any current legacy roaming agreement are not presumptively commercially reasonable with respect to future agreements.
  - The Commission's inclusion of "the extent and nature of providers' buildout" in the *Order* as a factor was not intended to allow a host carrier to deny roaming in a particular area where the otherwise built-out requesting provider has not built out.

# Public Interest – Consumer Benefits

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- Due to unreasonably high roaming rates, TMUS and other carriers are forced to restrict customers' roaming data usage in some areas.
- Limitless Mobile has severely restricted its customers' access to AT&T's network "for the sole reason that AT&T's data roaming rates are too high and by continuing roaming access, Limitless could not maintain a commercially competitive retail wireless data offering to the general public."
- The Rural Wireless Association noted that competing carriers "cannot sustain the provision of data roaming services if [they] must provide that service at a loss."
- Artificially high data roaming rates are directly or indirectly passed on to consumers and have caused carriers to cap or restrict access to data roaming.
- The availability of reasonable data roaming will ensure reliable data service for consumers living or travelling to remote areas where roaming is needed most.

# A Declaratory Ruling is Procedurally Appropriate

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- The limited relief requested will help ensure ubiquitous availability of roaming on commercially reasonable terms as envisioned in the Commission's *Data Roaming Order*.
- TMUS is not seeking the regulation of rates; rather, the Petition requests targeted guidance to facilitate negotiation of commercial agreements and more predictable dispute resolution.
- A declaratory ruling is the appropriate way for the Commission to address industry-wide problems and was contemplated in the *Data Roaming Order*. No rulemaking is needed.
- The petition is not a one-on-one dispute or contract complaint since it seeks guidance for all carriers.